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 Debtor in Possession

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 SACRAMENTO DIVISION

In re:

AMERICAN MOULDING AND  
 MILLWORK COMPANY,

Debtor-In-Possession.

Tax ID #75-2161329

CASE NO. 05-34431-C-11

DCN: FWP-25

Date: March 14, 2006  
 Time: 9:30 a.m.  
 Crtrm: 35

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF  
 ORDER AUTHORIZING DEBTOR TO SELL REAL  
 PROPERTY FREE AND CLEAR OF LIENS**

The motion of American Moulding & Millwork Company, the debtor and debtor-in-possession in the above referenced case (the "Debtor") for authority to sell the certain property of the bankruptcy estate<sup>1</sup> (the "Stockton Property") to MCD-West Lane, LLC or its designee ("Buyer") for the sum of \$7,850,000 in accordance with the terms of the asset purchase agreement executed on or about February 7, 2006, which is attached as Exhibit 1 (the "Agreement") to the Order Authorizing Debtor to Sell Real Property Free and Clear of Liens, entered herewith (the "Order") free and clear of liens and interests and for other relief (the "Motion") came on for hearing on March 14, 2006, at 9:30 a.m. (the "Sale Hearing"). The Debtor appeared by and through its attorney of record Thomas A Willoughby of Felderstein

<sup>1</sup> Approximately 63.67 acres of real property located in the County of San Joaquin, State of California, described as APN Parcel Nos. 117-090-01, 117-090-13 117-090-14, 125-360-04, and 127-212-15 including (i) the buildings, (ii) the fixtures attached to and needed for the operation of the buildings, (iii) the lighting, HVAC, electrical panels and transformers, sprinkler systems and pumps and other fire suppression equipment, the water storage tanks and pumps, (iii) all rights appurtenant to the property such as easements and access rights, and (iv) the lease for access over railroad property with the Union Pacific Railroad Company

1 Fitzgerald Willoughby & Pascuzzi, LLP. All other appearances were noted on the record.

2 Having given due consideration to the Motion, the declarations and other evidence submitted in  
3 support of the Motion, any opposition and/or response filed, the record and proceedings in the  
4 above-captioned case, any stipulations recited in open court, the arguments of counsel and other  
5 interested parties at the hearing, and for other good cause shown, the Court hereby finds, as a  
6 matter of fact, and concludes, as a matter of law as provided under Federal Rules of Bankruptcy  
7 Procedure<sup>2</sup> 7052 and 9014, in addition to any findings and conclusions stated orally on the record,  
8 as follows:

9 1. On October 6, 2005, the Debtor filed a petition under chapter 11, of the United  
10 States Bankruptcy Code (the "Petition Date").

11 2. This Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334 to approve the  
12 sale of the Stockton Property free and clear of (1) Any ownership interests of the Debtor, and its  
13 predecessors and successors in interest; (2) Any and all unrecorded liens interests or  
14 encumbrances, including but not limited to any: (a) unrecorded rights of parties in possession of  
15 the Stockton Property by reason an any unrecorded lease or rental agreement; (b) any easement  
16 not disclosed by those public records with impart constructive notice and which are not visible  
17 and apparent from an inspection of the surface of the Stockton Property; and/or (c) any  
18 unrecorded security interests, judgment liens or claims against the Stockton Property of any kind  
19 (the "Unrecorded Liens' Interests or Encumbrances"); (3) The claims or interests asserted by any  
20 person or entity, or their respective predecessors and successors in interest, against the Estate  
21 which do not constitute liens against or interests in the Property; (4) The claims or interests  
22 asserted by any person or entity, or their respective predecessors and successors in interest,  
23 evidenced by the liens, encumbrances and interests of record set forth below: (5) The Deeds of  
24 Trust of Wells Fargo Bank ("Wells Fargo Deed of Trust"), which are reflected as exceptions No.  
25 24 and 25 on the Preliminary Title Report, which was attached as Exhibit 4 to the Exhibit  
26 Document, filed in support of the Motion (the "Preliminary Title Report"); (6) The Easement

27  
28 <sup>2</sup> All subsequent references to the Federal Rules of Bankruptcy Procedure herein shall be to the  
"Bankruptcy Rules."

1 dated 1987 granting American Forest Products Company an easement for pedestrian and  
2 vehicular ingress and egress for a term of ten years, which is set forth as Exception No. 21 on the  
3 Preliminary Title Report; (7) The purchase agreement recorded by Aegis Alpine LLC ("Aegis  
4 Purchase Agreement"); which is set forth as Exception No. 23 to the Preliminary Title Report; (8)  
5 The mechanics lien recorded by Scott McElhinnie on or about February 1, 2006, but which was  
6 not shown on the Preliminary Title Report (the "Mechanics Lien"); and to authorize the Debtor  
7 on behalf of the estate in the above-captioned case (the "Estate") to enter into and perform in  
8 accordance with the Agreement.

9 3. The motion is a core proceeding pursuant to 28 U.S.C. §§157(b)(2)(A), (N), and  
10 (O). The statutory predicates for the relief requested in the Motion are 11 U.S.C. § 363, and  
11 Bankruptcy Rules 2002, 6004 and 9014.

12 4. All objections, if any, to the Motion and to the approval of the Agreement,  
13 including the transactions contemplated thereby, have been withdrawn, resolved, or overruled.

14 5. The Property is situated in the County of San Joaquin County, State of California,  
15 described more fully in Exhibit A to the Agreement.

16 6. Record title to the Property is vested in the Debtor (the "Record Owner").

17 7. As set forth in the declarations of service filed with this Court in connection with  
18 the Motion, notice of the hearing on the approval of the Motion (the "Notice") was duly served on  
19 (a) the Debtor and its counsel, (b) all creditors and interested parties, including parties requesting  
20 special notice, (c) each entity known to the Debtor to assert a lien, encumbrance or other interest  
21 in, or claim to, the Property that is affected by the Order on the Motion, and (d) the Office of the  
22 United States Debtor, all in accordance with applicable Bankruptcy Rules 2002(a)(2), 2002(c)(1),  
23 2002(i), 2002(k), 6004(a) and 6004(c). Each entity known to the Debtor to assert a lien,  
24 encumbrance, claim or other interest in or to the Property that is affected by the Order on the  
25 Motion was also served with a complete copy of the Motion, and all supporting declarations and  
26 pleadings filed by the Debtor in connection with the Motion.

27 8. The Notice (1) complied in all respects with the requirements of the Bankruptcy  
28 Code and the Bankruptcy Rules; (2) fully and adequately described the relief requested in the

1 Motion and set forth the means by which the Motion, and all supporting declarations and  
2 pleadings filed by the Debtor in connection with the Motion, could be obtained promptly by a  
3 party in interest; (3) provided fair and reasonable notice under the circumstances of this case with  
4 respect to deadlines and procedures for objecting to the relief requested in the Motion; and (4) set  
5 forth the time, date and place for the hearing on the Motion.

6 9. The proposed sale does not entail a sale of all or substantially all of the Debtor's  
7 assets that existed as of the Petition Date.

8 10. The Property is subject to the liens, encumbrances and other interests of record  
9 that were set forth in the preliminary report/title commitment (the "Title Report") issued by First  
10 American Title, which was attached as Exhibit 4 to the Exhibit Document filed in support of the  
11 Motion; including the following:

12 a. The Deeds of Trust of Wells Fargo Bank ("Wells Fargo Deed of Trust"),  
13 which are reflected as exceptions No. 24 and 25 on the Title Report;

14 b. The Easement dated 1987 granting American Forest Products Company an  
15 easement for pedestrian and vehicular ingress and egress for a term of ten years, which is set forth  
16 as Exception No. 21 on the Title Report;

17 c. The purchase agreement recorded by Aegis Alpine LLC ("Aegis Purchase  
18 Agreement"); which is set forth as Exception No. 23 to the Title Report; and

19 d. Various secured real property taxes and assessments.

20 11. In addition to the recorded liens detailed in paragraph 10 above, after the filing of  
21 the Motion, the Debtor discovered that a mechanics lien was recorded by Scott McElhinnie (the  
22 "Mechanics Lien") on or about February 2, 2006. The Debtor amended its Motion to request that  
23 the Court approve the sale free and clear of the Mechanics Lien on or about February 28, 2006,  
24 and notice of the amendment was duly served on Mr. Scott McElhinnie. Sufficient notice was  
25 given to Mr. McElhinnie to appear and contest the Motion. Mr. McElhinie did not appear and  
26 contest the Motion.

27 12. Within the meaning of 11 U.S.C. §363(f)(3), the purchase price of the Property is  
28 greater than the aggregate value of all liens on the Property.

1           13.     Within the meaning of 11 U.S.C. §363(f)(4), the interests of American Forest  
2 Products Company, and the Aegis Purchase Agreement are subject to bona fide dispute based on  
3 the following:

4           a.     With respect to the recorded easement in favor of American Forest  
5 Products Company, as set forth in the Title Report, the easement was limited to a term of ten (10)  
6 years and more than ten (10) years have passed since the recordation of this easement, as such, its  
7 continued validity is in bona fide dispute;

8           b.     With respect to the Aegis Purchase Agreement, the Aegis Purchase  
9 Agreement was rejected pursuant to an Order entered by this Court on or about February 17,  
10 2006, and as such it is in bona fide dispute;

11           c.     With respect to the Mechanics Lien, such Mechanics Lien was recorded  
12 more than ninety (90) days after the Petition Date, and the Debtor asserts that the post-petition  
13 recordation was either a violation of the automatic stay and/or untimely under California State  
14 Law, and as such, not a valid lien, and as such it is in bona fide dispute;

15           d.     And, with respect to the Unrecorded Liens' Interests or Encumbrances, the  
16 Debtor disputes such liens and interests because even if they existed, they would be subject to  
17 avoidance under the strong arm powers of 11 U.S.C. § 544.

18           14.     All taxes and assessments that are secured claims against the Stockton Property  
19 and are due and payable upon transfer are entitled to immediate payment out of the proceeds of  
20 the escrow.

21           15.     Except as specified in the Agreement, the Buyer is acquiring the Stockton Property  
22 in its "AS IS" condition, with all faults, if any, and without any warranty, express or implied.

23           16.     The Debtor has engaged in fair and reasonable marketing, advertising and other  
24 sale efforts and procedures in connection with the sale of the Property, which efforts and  
25 procedures have enabled the Estate to obtain a fair and reasonable price for the Property under the  
26 circumstances of this case. In connection with the proposed sale, the Debtor has complied with  
27 all sale procedures established or required by this Court.

28           17.     The highest and best offer to purchase the Property was the one received from

1 Buyer to purchase the Property for a purchase price of \$7,850,000.00 on the terms and conditions  
2 set forth in the Agreement, including the following modifications thereto as set forth on the  
3 record at the time of the hearing on the Motion.

4 18. The terms and conditions of the sale transaction as provided for in the Agreement  
5 are fair and reasonable; entry into the Agreement on behalf of the Estate is a sound exercise of the  
6 Debtor's reasonable business judgment; and, the sale transaction contemplated by the Agreement  
7 is in the best interests of the creditors, interest holders and the Estate.

8 Dated: 03/14/06

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UNITED STATES BANKRUPTCY COURT JUDGE